

BEFORE THE
SOUTH CAROLINA PUBLIC SERVICE COMMISSION

DOCKET NO. 2010-411-C

In the Matter of the Application of Pac-
West Telecomm, Inc. for a Certificate of
Public Convenience and Necessity to
Provide Local Exchange Services to be
regulated in accordance with procedures
authorized for New South
Communications by Order No. 98-165
in Docket No. 97-467-C; and for
Interexchange Service Offerings to be
regulated in accordance with Procedures
established for alternative regulation in
Order Nos. 95-1734 and 96-55 in
Docket No. 95-661-C.

**PREFILED DIRECT TESTIMONY OF
JAMES C. FALVEY**

Q. Please state your full name, position, and business address.

A. My name is James C. Falvey. I am Vice President, Regulatory Affairs and Senior Counsel for Pac-West Telecomm, Inc. (“Pac-West” or “Applicant”). My business address is 420 Chinquapin Round Rd., Suite 2i, Annapolis, MD 21401.

Q. Please describe your professional experience and educational background.

A. I joined Pac-West in April 2010. I am responsible for efforts across all regulatory and legislative areas, including carrier relations, policy development, managing industry and FCC relations, and state and federal legislative activity. Prior to joining Pac-West, I held senior regulatory positions for twelve years with several successful competitive local exchange carriers (“CLECs”), including CoreTel and Xspedius Communications. From 1993 to 1996, I was an attorney with Swidler & Berlin where I represented CLECs in a wide variety of local competition proceedings. I began my career as a legislative

1 assistant for Senator Harry Reid. I received my law degree in 1990 from the University
2 of Virginia School of Law and my Bachelor of Arts degree in 1985 from Cornell
3 University. I was a CompTel board member for five years and am currently a member of
4 the Bar in Washington D.C. and Virginia.

5 **Q. What is the purpose of your testimony in this proceeding?**

6 A. The purpose of my testimony is to describe the resold and facilities-based services that
7 Pac-West proposes to offer in South Carolina and to review issues related to Pac-West's
8 request for a certificate of public convenience and necessity to provide such services. My
9 testimony specifically relates to Pac-West's financial, managerial, financial, and technical
10 capacity to provide the telecommunications services for which authority is requested, and
11 its capability and willingness to comply with the rules and policies of this Commission.

12 **Q. Please describe the authority that Pac-West seeks from the Commission.**

13 A. Pac-West seeks to offer all forms of resold and facilities-based interexchange and local
14 exchange telecommunications services throughout the State of South Carolina.

15 **Q. Please describe the corporate structure of Pac-West.**

16 A. Pac-West is a privately held corporation with corporate offices in Oakland, and its
17 principal place of business in Stockton, California. The Company was formed in 1981
18 and is celebrating its 30th anniversary this year. In 2010, Pac-West introduced the
19 Telastic suite of services, a telecommunications gateway for Voice over Internet Protocol
20 (VoIP), telecom, and other service providers to provide a wide range of
21 telecommunications services. Telastic was recently named 2010 product of the year by
22 Internet Telephony magazine. Pac-West's success in developing innovative products and
23 services and in expanding its geographic reach has translated into impressive growth in

1 recent years, and as such Pac-West is extremely well qualified financially to operate and
2 expand its business. Like many CLECs, Pac-West underwent a bankruptcy a few years
3 ago, but emerged in November 2007 a stronger company. Unlike many CLECs, Pac-
4 West is cash flow positive and EBITDA (earnings before interest, taxes and depreciation
5 and amortization) positive and continues to grow its revenue year over year. In addition
6 to expanding its customer base, Pac-West is expanding geographically from West to East
7 across the United States.

8 **Q. Does Pac-West possess the requisite financial, managerial, and technical ability to**
9 **provide the services for which it has applied for authority?**

10 A. Yes.

11 **Q. Please describe Pac-West's managerial and technical qualifications.**

12 A. Pac-West possesses the managerial and technical qualifications to provide its proposed
13 telecommunications services. Pac-West has 30 years of experience in voice telephony
14 and currently operates one of the most comprehensive local access networks in the
15 Western United States. Pac-West is currently authorized to provide telecommunications
16 services in the states of Alabama (11/05/05); Arizona (8/27/99); California (12/20/95);
17 Colorado (7/14/99); Delaware (12/05/05); District of Columbia (9/16/05); Florida
18 (11/07/05); Georgia (11/17/05); Idaho (4/10/00); Illinois (2/08/06); Indiana (11/30/05);
19 Kansas (12/02/05); Kentucky (10/26/05); Louisiana (11/29/05); Massachusetts (10/27/05);
20 Michigan (12/20/05); Minnesota (2/21/06); Nevada (3/10/97); New Jersey (12/02/05); New
21 Mexico (4/30/01); New York (1/24/06); North Carolina (10/14/05); Oregon (3/18/99);
22 Rhode Island (10/20/05); South Dakota (1/4/11); Tennessee (1/10/06); Texas (12/13/05);
23 Utah (5/08/00); Virginia (12/20/05); Washington (11/25/98); Wisconsin (10/31/05); and

Wyoming (2/9/11). Pac-West has not been denied requested certification in any jurisdiction. Descriptions of the telecommunications and managerial experience of Pac-West's key personnel, who have extensive financial, managerial, and technical experience, are provided with the Application as Exhibit D.

Q. Please describe Pac-West's financial qualifications.

A. As explained in its Application, Pac-West possesses the financial qualifications necessary to conduct its telecommunications operations. Financial statements demonstrating Pac-West's financial capability to offer the proposed services have been submitted as Exhibit B of its Application.

Q. Please describe the types of services that Pac-West will offer in South Carolina.

A. Pac-West intends to provide facilities-based and resold local exchange and interexchange telecommunications services in South Carolina, primarily on a wholesale basis to other telecommunications carriers. Pac-West will provide a wide variety of local and long distance telecommunications services, including local and long distance origination and termination; switched and special access; 8YY originating access and 8YY services; managed modem; and collocation services. Pac-West will continuously monitor and maintain a high level of control over its network on a 24-hours-a-day, 7-days-a-week basis to ensure that Pac-West provides safe, reliable, and high-quality telecommunications services in South Carolina.

Q. What facilities will Pac-West use to provide its proposed local exchange services?

A. Pac-West's telecommunications services in the State of South Carolina will initially be provided through the resale of the facilities of other certificated carriers. Pac-West will

1 deploy its own facilities in South Carolina once it develops sufficient business to warrant
2 the deployment of such facilities.

3 **Q. What geographic areas will Pac-West serve?**

4 A. Pac-West seeks authority to provide service throughout the State of South Carolina.

5 **Q. Please provide the name, address and telephone number of the person that will**
6 **serve as your company's contact to the Consumer Service Division for complaint**
7 **resolution.**

8 A. For complaint resolution, please contact Eva Fettig, Sr. Director, Regulatory Affairs, Pac-
9 West Telecomm, Inc., 555 12th Street, Oakland, CA 94607, telephone: (510) 380-5984,
10 facsimile: (510) 390-5972, e-mail: efettig@pacwest.com.

11 **Q. If authorized to provide competitive telecommunications services, will Pac-West**
12 **abide by the rules, regulations, policies and orders of this Commission, and the laws**
13 **of the State of South Carolina, as now adopted or that may be adopted in the future,**
14 **in its provision of competitive intrastate telecommunications services?**

15 A. Yes. Pac-West commits to abide by all rules and regulations that are deemed to be
16 applicable to Pac-West. Pac-West also agrees to abide by all 911 requirements at such
17 time as Pac-West begins to provide local exchange service.

18 **Q. How will Pac-West guard against slamming?**

19 A. Pac-West is a wholesale carrier and will not be switching retail customers from other
20 retail carriers. However, should Pac-West enter the retail market, Pac-West will comply
21 with all state and federal requirements to guard against slamming.

22 **Q. How will Pac-West bill for its services?**

1 A. To the extent Pac-West offers service to end user customers, Pac-West will bill its
2 customers directly for the services it provides its customers.

3 **Q. How will Pac-West handle service, billing and repair complaints?**

4 A. Pac-West has a toll-free number, (877) 626-4325, that customers may call to register
5 service, billing and repair complaints. Customers may also send written inquiries and
6 complaints to Pac-West's Customer Care Center, 4210 Coronado Avenue, Stockton, CA
7 95204, or by e-mail to amsupport@pacwest.com. Pac-West views customer satisfaction
8 as critical to its success in the competitive marketplace and will address all services,
9 billing, and repair complaints and inquiries promptly. If Pac-West is unable to resolve a
10 billing complaint to a customer's satisfaction, Pac-West will advise the customer of its
11 right to file a complaint with the South Carolina Public Service Commission.

12 **Q. What regulatory treatment is Pac-West seeking for its local exchange services?**

13 A. Pac-West requests that the Commission allow it to employ a flexible local exchange rate
14 structure first authorized by Order No. 98-165 in Docket No. 97-467-C. Specifically, Pac-
15 West requests that the Commission: a) adopt for its local exchange services a competitive
16 rate structure incorporating maximum rate levels with the flexibility for rate adjustment
17 below the maximum rate levels; and b) presume that Pac-West's tariff filings for local
18 exchange services be valid upon filing, subject to the Commission's authority, within
19 thirty (30) days, to institute an investigation of such filings. At the discretion of the
20 Commission, such filings may be suspended pending further order of the Commission
21 and any such filings may be subject to the same monitoring process as the Commission
22 applies to other, similarly situated carriers.

23 **Q. What regulatory treatment is Pac-West seeking for its interexchange services?**

1 A. Pac-West requests that its business service offerings be regulated pursuant to the
2 procedures described and set forth in Order Nos. 95-1734 and 96-55 in Docket No. 95-
3 661-C, as modified by Order No. 2001-997 in Docket No. 2000-407-C. Specifically,
4 Pac-West requests that the Commission regulate its business services in the same manner
5 as the Commission regulates those of AT&T Communications of the Southern States,
6 Inc. ("AT&T"). Further, Pac-West requests that the Commission: a) remove the
7 maximum rate tariff requirements for Pac-West's business services and future private
8 line, and customer network-type offerings; b) presume that Pac-West's tariff filings for
9 these services be valid upon filing. However, if the Commission institutes an
10 investigation of a particular filing within seven (7) days, the tariff filing will be
11 suspended until further order of the Commission; and c) grant Pac-West the same
12 treatment as AT&T in connection with any future relaxation of the Commission's
13 reporting requirements.

14 **Q. Does Pac-West have offices in South Carolina?**

15 A. No. Pac-West does not intend to have offices in South Carolina at this time.
16 Accordingly, Pac-West requests, pursuant to Rule 103-610, that the Commission allow it
17 to keep all applicable books and records at its offices in California. In the event that the
18 Commission or ORS should desire to inspect such books and records, Pac-West will
19 provide access expeditiously at its own expense.

20 **Q. By what method will Pac-West keep its financial records?**

21 A. Pac-West uses Generally Accepted Accounting Principles ("GAAP"). To the extent that
22 the Commission's Rules require the use of the Uniform System of Accounts ("USOA"),
23 Pac-West requests a waiver in order that GAAP be allowed.

1 **Q. Will Pac-West comply with all applicable Commission service rules and billing**
2 **standards?**

3 A. Yes.

4 **Q. Please describe the public interest benefits associated with Pac-West's proposed**
5 **offering of telecommunications services in South Carolina.**

6 A. Both the South Carolina legislature and the United States Congress, through the
7 Communications Act of 1934, as amended ("Telecom Act"), have determined that it is in
8 the public interest to promote competition in the provision of telecommunications
9 services. The Telecom Act was designed to promote increased competition in the
10 telecommunications markets. Moreover, the Commission has already determined that the
11 grant of applications for competing licenses to provide telecommunications service is in
12 the public interest. The grant of Pac-West's Application will further the public interest
13 by expanding the availability of alternative sources of telecommunications services in the
14 State of South Carolina. Pac-West's proposed services will provide multiple public
15 benefits by providing users of telecommunications services with a greater range of
16 competitive choices. In addition, increased competition will lead to lower prices, more
17 innovative services such as Pac-West's Telastic suite of services, and more responsive
18 customer service.

19 Enhanced local exchange and interexchange services competition also will
20 stimulate the demand for the services supplied by all carriers, including incumbents.
21 Incumbents will have newfound market incentives to improve the efficiency of their
22 operations, and will benefit from the increased use of telecommunications services, due
23 to the expansion of the total market for telecommunications services.

1 Furthermore, increased competition has a proven track record of consistently
2 driving telecommunications prices down, which benefits South Carolina consumers who
3 have seen concomitant reductions in their bills. These widespread rate reductions have in
4 turn contributed to strengthening the South Carolina economy.

5 **Q. Is the Company willing and able to conform to the Constitution and laws of the**
6 **State of South Carolina and to the rules and regulations of the Commission, unless**
7 **application of such rules and regulations is specifically waived by the Commission?**

8 A. Yes.

9 **Q. Will the Company file all applicable reports as required by the Commission?**

10 A. Yes. Pac-West is aware of the Commission's requirements that all telecommunications
11 carriers file a report on South Carolina operations, a gross receipts report, and a universal
12 service contribution report on an annual basis.

13 **Q. Does this conclude your testimony?**

14 A. Yes, it does.

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Order Nos. 95-1734 and 96-55 in Docket
No. 95-661-C

CERTIFICATE OF SERVICE

This is to certify that I have caused to be served this day, one (1) copy of the **Prefiled Direct Testimony of James C. Falvey** by placing a copy of same in the care and custody of the United States Postal Service (unless otherwise specified), with proper first-class postage affixed hereto and addressed as follows:

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February 28, 2011
Columbia, South Carolina